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PART 901—NONPROCUREMENT DEBARMENT AND SUSPENSION

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AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

SOURCE: 71 FR 70459, Dec. 5, 2006, unless otherwise noted.

§ 901.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the DOE policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for DOE to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (31 U.S.C. 6101 note).

§ 901.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a DOE suspension or debarment action;

(c) DOE debarment or suspension official; and

(d) DOE grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 901.30 What policies and procedures must I follow?

The DOE policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

Subpart A—General**§ 901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?**

The Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and the Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

Subpart B—Covered Transactions**§ 901.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), DOE does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions**§ 901.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**§ 901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subpart E–H [Reserved]**Subpart I—Definitions****§ 901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.930).**

The Debarring Official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The Debarring Official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

§ 901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.950).

DOE means the U.S. Department of Energy, including the NNSA.

NNSA means the National Nuclear Security Administration.

§ 901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

The suspending official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The suspending official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

Subpart J [Reserved]

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PART 1326—NONPROCUREMENT DEBARMENT AND SUSPENSION

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1326.20 Does this part apply to me?

1326.30 What policies and procedures must I follow?

Subpart A—General

1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

Subpart J [Reserved]

AUTHORITY: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 71 FR 76574, Dec. 21, 2006, unless otherwise noted.

§ 1326.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the

Department of Commerce policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1326.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by Subpart B and § 1326.970 of this part).

(b) Respondent in a Department of Commerce suspension or debarment action.

(c) Department of Commerce debarment or suspension official;

(d) Department of Commerce grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 1326.30 What policies and procedures must I follow?

The Department of Commerce policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 1326.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Commerce policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Commerce, the Secretary of Commerce or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) For purposes of the Department of Commerce, a transaction that the Department needs to respond to a national or agency-recognized emergency or disaster includes the Fisherman's Contingency Fund.

(b) For purposes of the Department of Commerce, an incidental benefit that results from ordinary governmental operations includes:

- (1) Export Promotion, Trade Information and Counseling, and Trade policy.
- (2) Geodetic Surveys and Services (Specialized Services).
- (3) Fishery Products Inspection Certification.
- (4) Standard Reference Materials.
- (5) Calibration, Measurement, and Testing.
- (6) Critically Evaluated Data (Standard Reference Data).
- (7) Phoenix Data System.
- (8) The sale or provision of products, information, and services to the general public.

(c) For purposes of the Department of Commerce, any other transaction if the application of an exclusion to the transaction is prohibited by law includes:

- (1) The Administration of the Anti-dumping and Countervailing Duty Statutes.
- (2) The export Trading Company Act Certification of Review Program.
- (3) Trade Adjustment Assistance Program Certification.
- (4) Foreign Trade Zones Act of 1934, as amended.
- (5) Statutory Import Program.

§ 1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to a subcontract that is awarded by a participant in a procurement transaction covered under 2 CFR 180.220(a), if the amount of the subcontract exceeds or is expected to exceed \$25,000. This extends the coverage of the Department of Commerce nonprocurement suspension and debarment requirements to one additional tier of contracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR Part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]

Department of Commerce

§ 1326.970

Subpart I—Definitions

§ 1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

For purposes of the Department of Commerce, nonprocurement transaction includes the following:

- (a) Joint project Agreements under 15 U.S.C. 1525.
- (b) Cooperative research and development agreements.

- (c) Joint statistical agreements.
- (d) Patent licenses under 35 U.S.C. 207.
- (e) NTIS joint ventures, 15 U.S.C. 3704b.

Subpart J [Reserved]

EFFECTIVE DATE NOTE: At 71 FR 76574, Dec. 21, 2006, Chapter 13, consisting of part 1326 was added, effective Jan. 22, 2007.

CHAPTER XXXVII—PEACE CORPS

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PART 3700—NONPROCUREMENT DEBARMENT AND SUSPENSION

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3700.10 What does this part do?

3700.20 Does this part apply to me?

3700.30 What policies and procedures must I follow?

3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?

3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 22 U.S.C. 2503(b).

SOURCE: 71 FR 67431, Nov. 22, 2006, unless otherwise noted.

§ 3700.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Peace Corps policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Peace Corps to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327).

§ 3700.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a Peace Corps suspension or debarment action;

(c) Peace Corps debarment or suspension official; or

(d) Peace Corps grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 3700.30 What policies and procedures must I follow?

The Peace Corps policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3700.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Peace Corps policies and procedures are those in the OMB guidance.

§ 3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Peace Corps has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

§ 3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), Peace Corps does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

§ 3700.332

§ 3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180.

§ 3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435

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of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

EFFECTIVE DATE NOTE: At 71 FR 67431, Nov. 22, 2006, Chapter 37, consisting of part 3700 was added, effective Jan. 8, 2007.